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June 5, 1997

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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Bott Communications, Inc.
MM Docket No. 97-86; RM-9025
Camdenton, Missouri

Dear Mr. Caton:

Enclosed herewith on behalf of Bott Communications, Inc. are an original and four copies of its "Motion to Strike," filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,



Andrew S. Kersting
Counsel for
Bott Communications, Inc.

Enclosures
cc (w/ encl.): Certificate of Service

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Federal Communications Commission
Office of Secretary

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-86
Table of Allotments,)	RM-9025
FM Broadcast Stations)	
(Camdenton, Missouri))	
To: Chief, Allocations Branch		

MOTION TO STRIKE

Bott Communications, Inc. ("Bott"), by counsel, hereby moves to strike a portion of the "Counterproposal Reply Comments of Lake Broadcasting, Inc.," filed May 27, 1997 ("Lake Reply Comments"), in the above-captioned proceeding. In support of this motion, the following is stated:

I.
Background

In response to a Petition for Rulemaking, filed February 3, 1997, by Camdenton Community Broadcasters ("CCB"), the Commission issued a *Notice of Proposed Rule Making*, 12 FCC Rcd 3518 (Chief, Allocations Branch 1997) ("*NPRM*"), proposing the allotment of Channel 265A to Camdenton, Missouri,¹ as that community's first local commercial FM service. On April 21, 1997, Lake Broadcasting, Inc. ("Lake") filed comments supporting the allotment of Channel 265A to Camdenton with a modified site restriction 15.2 kilometers west of the community in order to eliminate any conflict between CCB's proposal and Lake's proposal in MM Docket No. 89-120,

¹ Unless otherwise indicated, all communities referenced herein are located in the state of Missouri.

Northweye, Cuba, Waynesville, Lake Ozark, and Eldon, Missouri (the “Eldon proceeding”)², to upgrade its Station KBMX(FM), Eldon, to Channel 270C1.³

Also on April 21, 1997, Bott filed a timely counterproposal proposing the allotment of Channel 265C3 to Laurie, which would provide that community with its first local FM service. In Lake’s Reply Comments filed in response to Bott’s counterproposal, Lake proposed the allotment of Channel 265C3 to “a different but comparable community” -- Humansville -- in order to preserve Lake’s interest in having Channel 264A allotted to Waynesville. Lake Reply Comments, pp. 2-3. Lake characterized its proposal as a “global solution” even though the Commission does not permit the introduction of a new community into an FM allocation proceeding at the reply comment stage, even if it affords a global solution. *See Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931, 932 n.4 (1990).

In addition, Lake claimed that counsel for Bott had requested the allotment of Channel 264A at Waynesville in another rulemaking proceeding:

. . . [C]ounsel for Bott is still *supporting* the use of Channel 264A at Waynesville to achieve a “global solution” in another FM channel rulemaking proceeding on behalf of another client -- Zimmer Radio of Mid-Missouri, licensee of Station KCMQ(FM), Columbia, Missouri. . . . Lake submits that Bott’s counsel is legally and ethically estopped from arguing against protection of Waynesville Channel 264A in this proceeding, while the same counsel continues to argue in favor of protecting Waynesville Channel 264A in the Columbia proceeding. *See* D.C. Rules of Professional Conduct, Rule 1.7 (lawyer cannot represent clients with adverse positions on the same matter). . . . If Zimmer prevails on its pro-Channel 264A argument in the Columbia proceeding, that will dictate the Commission’s result in

² *See Report and Order*, 7 FCC Rcd 1449 (Mass Med. Bur. 1992), *appeal pending*.

³ In order to permit the C1 upgrade at Eldon, Lake suggested in its January 5, 1993, “Supplement to Petition for Reconsideration” in the Eldon proceeding that Channel 264A be allotted to Waynesville in lieu of two other alternative channels that previously had been proposed. *See* Lake Reply Comments, p. 2.

both proceedings and negate Bott's anti-Channel 264A here, and vice-versa. The Commission should request Bott's counsel to adopt a single position on this question in *both proceedings*, or withdraw from representing Zimmer and/or Bott.

Lake Reply Comments, pp. 3-4 (emphasis in original). As shown below, there is no basis in fact or law for Lake's allegations of professional misconduct by Bott's counsel, and those wrongful allegations, which could taint Bott's counterproposal if not addressed as a threshold matter, should be stricken from this proceeding.

II. The Columbia Proceeding

Zimmer Radio of Mid-Missouri, Inc. ("Zimmer"), is the licensee of Station KCMQ(FM), Columbia, Missouri. On November 24, 1995, the Commission released a *Report and Order* in *Columbia, Bourbon, Leasburg, Gerald, Dixon and Cuba, Missouri*, 10 FCC Rcd 12624 (Chief, Allocations Branch 1995), in which it granted a petition for rulemaking filed by Al Greenfield d/b/a The Greenfield Group, Zimmer's predecessor-in-interest, seeking the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and the corresponding modification of Station KCMQ's authorization.⁴

Lake filed a petition for reconsideration of the Commission's *Report and Order* in the Columbia proceeding on January 11, 1996, arguing that the Commission erred in severing the Columbia and Eldon proceedings. Lake claimed, *inter alia*, that because the allotment of Channel 221A to Dixon conflicts with its proposal in the Eldon proceeding to allot the same channel to Waynesville, the allotment of Channel 221A to Dixon should be held in abeyance pending the

⁴ The Commission announced that it also would substitute Channel 231A for Channel 244A at Bourbon; (ii) allot Channel 221A to Dixon; and (iii) allot Channel 297C3 to Cuba as that community's second FM broadcast service, and make the channel available for application. 10 FCC Rcd 12624.

proposed allotment of that channel to Waynesville in the Eldon proceeding.⁵ See Lake Petition for Reconsideration, pp. 6-7.

Zimmer filed an opposition to Lake's reconsideration petition on February 15, 1996 ("Opposition") (copy attached hereto). In its Opposition, Zimmer argued that the Commission properly severed the Columbia and Eldon proceedings. Specifically, Zimmer stated that the Commission acted within its discretion in holding Lake to a commitment it made regarding its willingness to accept a Class C2 upgrade at Eldon in that proceeding. Indeed, Lake acknowledged in the Columbia proceeding that it had a Class C2 upgrade compromise proposal on file with the Commission since January 1993, and had made no effort to withdraw that commitment prior to the release of the *Report and Order* in the Columbia proceeding. Moreover, Lake had a construction permit application pending for a Class C2 facility at Eldon. See Opposition, pp. 5-6; *Columbia, et al., Missouri*, 10 FCC Rcd at 12626, n.12.

Zimmer further stated:

. . . [I]n a further effort to propose a resolution of this protracted rulemaking proceeding, which has been pending before the Commission for over three and one-half years, Zimmer respectfully submits that Channel 264A *apparently* is available as an additional channel at Dixon, or as a substitute channel at Waynesville, Missouri.

⁵ Lake's reconsideration petition in the Columbia proceeding indicates that Lake has advocated the allotment of either Channel 221A or Channel 264A to Waynesville. See Lake Petition for Reconsideration in MM Docket No. 92-214, filed January 11, 1996, pp. 6-7; and Lake Reply Comments, p. 2.

Zimmer Opposition, p. 8 (emphasis added). Zimmer also stated that the apparent availability of Channel 264A was “an alternative means of severing the mutual exclusivity” between the Columbia and Eldon proceedings.⁶ *Id.*

III.

Zimmer’s Position Regarding the Availability of Channel 264A at Waynesville Is Not “Adverse” to Bott’s Counterproposal

As demonstrated above, the substitution of Channel 244C1 for Channel 244C3 at Columbia (and corresponding modification of KCMQ’s authorization) is not dependent upon the allotment of Channel 264A to Waynesville. Indeed, the Commission has already determined that the Columbia proceeding is no longer mutually exclusive with the Eldon proceeding. *See Columbia, et al., Missouri*, 10 FCC Rcd at 12626, n.12. Moreover, Zimmer’s statements regarding the “apparent” availability of Channel 264A “at either Dixon or Waynesville” were offered only as an “alternative means” of resolving the alleged mutual exclusivity between the Columbia and Eldon proceedings. *See Zimmer Opposition*, p. 8. Zimmer never specifically requested that Channel 264A be allotted to Waynesville. Therefore, because the Channel 244C1 upgrade at Columbia is not dependent upon the availability of Channel 264A at Waynesville, the suggested alternative allotment is not “adverse” and does not conflict with Bott’s counterproposal in this proceeding. Thus, there is no legal or factual basis for Lake’s suggestion to the Commission that counsel for Bott has violated the D.C.

⁶ Contemporaneous with the filing of its Opposition, Zimmer filed a “Motion to Sever” in which it also noted the apparent availability of Channel 264A at either Dixon or Waynesville, and that the channel would provide an alternative means of severing the mutual exclusivity between the two proceedings. *See Zimmer Motion to Sever*, filed February 15, 1996. Due to then-existing automatic stay provision contained in Section 1.420(f) of the Commission’s rules, Zimmer’s Motion to Sever requested that the Channel 244C1 upgrade at Columbia be severed from the proceeding and that the allotment be effective upon grant of Zimmer’s motion. *See Motion to Sever*, p. 6.

Rules of Professional Conduct, and/or that counsel must withdraw from representing Bott in this proceeding.

The disingenuous nature of Lake's position is reflected in the following qualifying characterizations it uses to describe Zimmer's statements regarding the potential allotment of Channel 264A to Waynesville in the Columbia proceeding: (i) "still supporting use of Channel 264A at Waynesville . . . in another proceeding"; (ii) Lake welcomed Zimmer's realization that "Channel 264A . . . may be available to Waynesville"; (iii) "same counsel continues to argue in favor of protecting Waynesville 264A in the Columbia proceeding"; and (iv) "If Zimmer prevails on its pro-Channel 264A argument in the Columbia proceeding" See Lake Reply Comments, pp. 3-4 (emphasis in original) (underscoring supplied). Contrary to Lake's contentions, Zimmer did nothing more than advise the Commission that Channel 264A *may be available* at Dixon or Waynesville *as an alternative means* of resolving the mutual exclusivity between the Columbia and Eldon proceedings. Lake's allegation that counsel for Bott has taken an adverse and conflicting position regarding the availability of Channel 264A at Waynesville, and thereby violated the D.C. Rules of Professional Conduct -- when counsel for Bott clearly has not -- is a flat misrepresentation intended to distract the Commission from reaching a fair result in this proceeding.⁷

⁷ As the Commission is well aware, certain rulemaking proceedings involving Lake have been held in abeyance pursuant to *Order to Show Cause and Notice of Apparent Liability*, 10 FCC Rcd 13685 (1995), which designated for hearing questions concerning whether Lake's FCC authorizations should be revoked due to the felony convictions of its President, Treasurer, and 67.5% stockholder, Michael Rice. All of the crimes occurred while Rice was the principal owner of Lake, and fully involved in the management and operation of all of its stations. In designating Lake's qualifications for hearing, the Commission stated:

The crimes for which [Rice] was convicted, involving principally sexual abuse and sexual assault on a number of children, are extremely serious and, indeed,

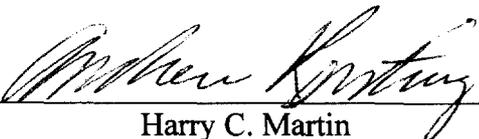
(continued...)

Bott respectfully submits that because there is no factual or legal basis for the serious and unwarranted allegations that Bott's counsel has taken "adverse" positions regarding the availability of Channel 264A at Waynesville, paragraph 4 of Lake's Reply Comments is frivolous under Section 1.52 of the Commission's rules, and, therefore, should be stricken from the record in this proceeding. *See generally Public Notice*, 11 FCC Rcd 3030 (1996) ("*Commission Taking Tough Measures Against Frivolous Pleadings*").

WHEREFORE, in light of the foregoing, Bott Communications, Inc. respectfully requests that the Commission STRIKE paragraph 4 of the "Counterproposal Reply Comments of Lake Broadcasting, Inc.," filed May 27, 1997.

Respectfully submitted,

BOTT COMMUNICATIONS, INC.

By: 
Harry C. Martin
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
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June 5, 1997

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⁷(...continued)
may come within that category of crimes which "shock the conscience."

10 FCC Rcd at 13687, ¶9 (footnote omitted).

ATTACHMENT

**OPPOSITION TO PETITION FOR RECONSIDERATION,
FILED FEBRUARY 15, 1996, BY ZIMMER RADIO OF MID-MISSOURI, INC.
(MM DOCKET NO. 92-214)**

Blu AF City Blc
#4

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

"PLEASE STAMP"
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FLITCHER, HEALD & HILDRETH

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 92-214
Table of Allotments)	RM-8062
FM Broadcast Stations)	RM-8144
(Columbia, Bourbon, Leasburg,)	RM-8145
Gerald, Dixon and Cuba, Missouri))	RM-8146
)	RM-8147

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FEB 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: Chief, Allocations Branch
Mass Media Bureau

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Zimmer Radio of Mid-Missouri, Inc. ("Zimmer"), licensee of Station KCMQ(FM), Columbia, Missouri, by counsel and pursuant to Section 1.429 of the Commission's rules, hereby submits its opposition to the petitions for reconsideration, filed January 11, 1996, and January 16, 1996, by Lake Broadcasting, Inc. ("Lake"), and Central Missouri Broadcasting, Inc. ("Central Missouri"), respectively, in the above-captioned proceeding. In support of this opposition, the following is stated:

I.

Preliminary Statement

On November 24, 1995, the Commission released a Report and Order in this proceeding in which it granted a petition for rulemaking filed by Al Greenfield d/b/a The Greenfield Group, Zimmer's predecessor-in-interest, seeking the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and the corresponding modification of Station KCMQ(FM)'s authorization. In addition, the Commission announced it would (i) substitute Channel 231A for Channel 244A at

Bourbon, Missouri; (ii) allot Channel 221A to Dixon, Missouri; and (iii) allot Channel 297C3 to Cuba, Missouri, as that community's second FM broadcast service, and make the channel available for application. 10 FCC Rcd 12624 (1995) ("Report and Order").

In its Petition for Reconsideration, filed January 11, 1996 ("Petition"), Lake¹ argues that the FCC erred by allotting a second frequency at Cuba, instead of simply modifying KFXE's construction permit to specify operation on Channel 297C3. Lake claims that in Zimmer's "Supplemental Comments," filed September 28, 1995, Zimmer abandoned its expression of interest in the Cuba channel, and that the Commission "mistakenly concluded that Zimmer's previous expression of interest in applying for the Cuba channel was still viable." Petition, p. 3. Consequently, Lake requests the Commission to reconsider its Report and Order to delete Channel 271A from the FM Table of Allotments and modify its KFXE construction permit to specify operation on Channel 297C3. Id.

In addition, Lake contends that the Commission erred in attempting to sever the mutual exclusivity between this proceeding and MM Docket 89-120. Specifically, Lake argues that the Commission erred in finding that its reconsideration petition filed in the MM Docket 89-120 proceeding indicated its willingness to accept a Class C2 upgrade at Eldon. Lake claims that its C2 compromise proposal lapsed "long ago" and cannot be applied in this proceeding. Petition, pp. 4-5. Lake also argues that the area and population differences between upgrading KBMX to Channel 270C1 or 270C2 are so substantial that precluding Lake from upgrading to Channel 270C1 would be "inequitable." Id. at 5-6.

¹ Lake is the licensee of Station KBMX(FM), Eldon, Missouri, permittee of Station KFXE(FM), Cuba, Missouri, and an applicant for a new FM broadcast station on Channel 244A at Bourbon, Missouri (File No. BPH-921112MH).

Finally, Lake claims that because the allotment of Channel 221A to Dixon conflicts with its proposal in Docket 89-120 to allot the same channel to Waynesville, Missouri, the allotment of Channel 221A to Dixon should be held in abeyance pending the proposed allotment of that channel to Waynesville in Docket 89-120. Id. at 6-7.

Central Missouri² filed its Petition for Reconsideration ("Petition") with the Commission on January 16, 1996. Central Missouri requests the Commission reconsider its Report and Order and allot Channel 243A to Dixon, Missouri, rather than Channel 221A. In support of its position, Central Missouri claims that the ability to allot Channel 221A to Dixon "remains clouded" due to Lake's position with respect to its compromise proposal concerning Channel 270C2 at Eldon in MM Docket 89-120. Central Missouri further claims that its request to assign Channel 243A to Dixon was based on its ability to locate the station's transmitter east of the city and "its assessment of the economic viability of the undertaking." Petition, p. 3. Central Missouri contends that locating the transmitter east of Dixon would permit the station to serve a larger, more stable audience, and that locating the transmitter west of the city, as would be the case with Channel 221A, would not be economically viable. Id.

² Central Missouri is the licensee of Stations KLIK(AM)/KTXY(FM), Jefferson City, Missouri, and a competitor of Station KCMQ(FM).

II.
Zimmer Intended to Withdraw Its Expression of Interest
For Channel 297C3 at Cuba

Zimmer has no objection to the substitution of Channel 297C3 for Channel 271A at Cuba, Missouri. As indicated in Zimmer's Supplemental Comments, filed September 28, 1995, Zimmer's Supplemental Comments were not intended to reargue the merits of any proposal presently before the FCC, but, rather, Zimmer was proposing a resolution of this protracted rulemaking proceeding which has been pending before the Commission for more than three years. Accordingly, Zimmer did not file an application for Channel 297C3 at Cuba during the recent filing window.³ Significantly, the deletion or retention of Channel 271A and the allotment of Channel 297C3 at Cuba, Missouri, do not directly nor indirectly conflict with the Channel 244C1 substitution at Columbia, Missouri.

III.
The FCC Properly Allotted Channel 221A to Dixon

Contrary to Central Missouri's allegations, Channel 221A is not "tied to the final resolution" in MM Docket 89-120. Although Central Missouri counterproposed the allotment of Channel 243A at Dixon in this proceeding, Lake's "suggestion" that Channel 221A be substituted for Channel 272A at Waynesville to eliminate a conflict with another counterproposal in MM Docket 89-120 was submitted in Lake's reply comments. See Report and Order, 10 FCC Rcd at 12626 n.11. Thus, because Lake's suggestion that Channel 221A be allotted to Waynesville is not entitled to cut-off protection, the allotment of that channel to Dixon is in no way dependent upon the final resolution

³ Zimmer has been advised, however, that at least one other party has filed an application for Channel 297C3 at Cuba.

of MM Docket 89-120. For the same reason, the allotment of Channel 221A to Dixon should not be held in abeyance pending resolution of MM Docket 89-120.

Furthermore, although Central Missouri contends that the allotment of Channel 221A to Dixon and the resulting site restriction to the west of the community will make the proposed station economically unviable, this argument is without merit. Indeed, Central Missouri has had constructive notice since the commencement of this proceeding that its counterproposal might "cause the Commission to allot a different channel than was requested for any of the communities involved." Notice of Proposed Rulemaking, in MM Docket No. 92-214, 7 FCC Rcd 6230, 6231 (Aud. Serv. Div. 1992) (Appendix). See also Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pinewood, South Carolina), 5 FCC Rcd 7609, 7610 (1990).⁴ Therefore, Central Missouri's argument that the Commission should allot Channel 243A to Dixon, rather than Channel 221A, must be rejected.

IV.

The FCC Properly Severed the Mutual Exclusivity Between This Proceeding and MM Docket No. 89-120

As noted in footnote 12 of the Report and Order, the specified coordinates for Channel 297C3 at Cuba conflict with Lake's proposed substitution of Channel 297A for Channel 271A at

⁴ Central Missouri's economic viability argument amounts to nothing more than a site preference for which the Commission has repeatedly held is not entitled to protection in a rulemaking proceeding. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Las Vegas, Nevada), 59 RR 2d 1330 (Mass Med. Bur. 1986) (an applied for but unauthorized transmitter site reflects only a preference for a particular location which is not entitled to protection from a rulemaking proceeding); FM Table of Assignments (Andalusia, Alabama), 49 Fed.Reg. 32201 (August 13, 1984) (same). Moreover, even assuming, arguendo, Central Missouri's argument had some legal validity, the counterproponent has failed to proffer any factual support for its naked assertion that the 6.8 kilometer (4.2 mile) site restriction to the west of the community will render the station economically unviable. For this additional reason, Central Missouri's argument should be rejected.

Cuba. The substitution of these channels at Cuba (and corresponding modification of Lake's authorization) is necessary to accommodate Lake's proposed upgrade of its Station KBMX(FM), Eldon, Missouri, from Channel 270A to 270C1 in MM Docket 89-120. The Commission determined, however, that in a petition for reconsideration filed in that proceeding, Lake stated it would be willing to accept a Class C2 upgrade at Eldon which would not require a related channel substitution at Cuba. Indeed, Lake has filed a one-step upgrade application for a Class C2 facility at Eldon (File No. BPH-930922IE). See Report and Order, 10 FCC Rcd at 12626, n.12. Nevertheless, as noted above, Lake contends that the FCC erred by attempting to sever the mutual exclusivity between this proceeding and MM Docket 89-120 because, according to Lake, the Class C2 compromise proposal Lake made in MM Docket 89-120 has lapsed. Petition, p. 5.

Despite Lake's protestations, the Commission acted within its discretion in holding Lake to the commitment it made regarding a Class C2 upgrade at Eldon in MM Docket 89-120. As Lake acknowledged, its Class C2 compromise proposal has been on file with the Commission since January 1993, and Lake made no effort to withdraw that commitment prior to the release of the Report and Order. Indeed, Lake's application for a Class C2 facility at Eldon remains pending. Moreover, as Lake also acknowledged, the reason the MM Docket 89-120 rulemaking proceeding is being held in abeyance is because the Commission has instituted a license revocation proceeding to determine whether Lake is qualified to remain a Commission licensee in light of the felony convictions of one of its principals who serves as its President, Treasurer, and majority stockholder. See Order to Show Cause and Notice of Apparent Liability, MM Docket No. 95-154, FCC 95-410 (released October 10, 1995). Therefore, because the delay in resolving MM Docket 89-120 is the

result of Lake's own doing, the Commission acted properly in holding Lake to the objective, manifested commitment it made in that proceeding, which Lake never sought to withdraw.

Furthermore, although Lake contends that the differences in the areas and populations to be served by a Class C2 and a Class C1 facility at Eldon are so substantial that the Commission's use of Lake's C2 compromise proposal to sever mutual exclusivity with MM Docket 89-120 is "inequitable" (Petition, p. 6), the differences are not nearly as great as Lake has represented. Indeed, in its Petition, Lake claims that a Class C2 facility at Eldon would serve a 60 dBu contour of 67,275 persons within 5,027 square kilometers, while a Class C1 facility would serve a 60 dBu contour of 269,040 persons within 15,565 square kilometers, resulting in a "300% difference in area and a 400% difference in population." Petition, p. 6. However, in its one-step upgrade application for a Class C2 facility at Eldon (File No. BPH-930922IE),⁵ Lake represented to the Commission that its proposed C2 facility would serve a 60 dBu population of 149,000, which is *more than twice* the population that Lake has stated in its Petition. As demonstrated in the attached engineering statement, the proposed Class C2 60 dBu contour at Eldon actually contains 149,462 persons within 8,553 square kilometers. Thus, the difference between a Class C2 upgrade and a Class C1 upgrade at Eldon is significantly less than that represented by Lake.⁶ See Engineering Statement, p. 4. For this additional reason, Lake's arguments concerning the Commission's use of its C2 compromise

⁵ As noted in the attached engineering statement, Lake's pending one-step upgrade application at Eldon proposes to operate as a Class C2 station on Channel 270 from its current site with a nondirectional effective radiated power of 48 kW and an antenna height of 154 meters above average terrain. These facilities are equivalent to the Class C2 maximum (ERP 50 kW/HAAT 150 meters). See Engineering Statement, p. 3, note 3.

⁶ Zimmer notes that an upgrade of Station KBMX(FM), Eldon, from Class A to Class C2 would result in a substantial increase in both area and population served -- 267% difference in area and 279% difference in population. See Engineering Statement, p. 4.

proposal to sever the mutual exclusivity between this proceeding and MM Docket 89-120 should be rejected.

V.

Channel 264A Is Available as an Additional Channel
at Dixon, or as a Substitute Channel at Waynesville

The Commission has stated that it is appropriate for parties in a rulemaking proceeding to suggest alternative channels which may lead to a resolution with respect to the communities at issue in the proceeding, even after the counterproposal deadline. Pinewood, South Carolina, 5 FCC Rcd at 7610. Accordingly, in a further effort to propose a resolution of this protracted rulemaking proceeding, which has been pending before the Commission for over three and one-half years, Zimmer respectfully submits that Channel 264A apparently is available as an additional channel at Dixon, or as a substitute channel at Waynesville, Missouri.

As noted in footnote 11 of the Report and Order, the allotment of Channel 221A at Dixon conflicts with Lake's Channel 221A "suggestion" for Waynesville, as restated in Lake's pending petition for reconsideration in MM Docket 89-120. However, as demonstrated in the attached engineering statement, Channel 264A apparently is available at either Dixon or Waynesville, which would provide an alternative means of severing the mutual exclusivity between this proceeding and MM Docket 89-120.⁷

⁷ It is Zimmer's understanding that the only potential impediment to the availability of Channel 264A concerns a counterproposal filed in MM Docket 90-66, seeking to upgrade Station KNSX(FM), Steelville, Missouri, from Channel 227C2 to Channel 227C1. It is unlikely, however, that this counterproposal will be successful due to the proponent's failure to include a verifying affidavit. Moreover, although the Commission's records are not clear, the upgrade at Steelville also may require the downgrading of Station KYLC(FM), Osage Beach, Missouri, from Channel 228C3 to 265A. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lincoln, Osage Beach, Steelville and Warsaw, Missouri), 8 FCC Rcd 4915 (1993); 7 FCC Rcd 3015 (1992).

VI.
Conclusion

As demonstrated herein, the Commission acted properly in substituting Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modifying Station KCMQ(FM)'s authorization accordingly. The Commission also acted properly in (i) substituting Channel 231A for Channel 244A at Bourbon, Missouri; (ii) allotting Channel 221A to Dixon, Missouri; and (iii) allotting Channel 297C3 to Cuba, Missouri, as that community's second FM broadcast service. Therefore, for the reasons stated herein, the petitions for reconsideration filed by Lake and Central Missouri should be denied.

WHEREFORE, in light of the foregoing, Zimmer Radio of Mid-Missouri, Inc., respectfully requests that the petitions for reconsideration filed by Lake Broadcasting, Inc., and Central-Missouri Broadcasting, Inc., be DENIED.

Respectfully submitted,

ZIMMER RADIO OF MID-MISSOURI, INC.

By: _____



Frank R. Jazzo
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209

February 15, 1996

TECHNICAL EXHIBIT
PREPARED ON BEHALF OF
ZIMMER RADIO OF MID-MISSOURI, INC.
CONCERNING MM DOCKET NO. 92-214

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of Zimmer Radio of Mid-Missouri, Inc., licensee of FM station KCMQ on channel 244 (96.7 MHz) at Columbia, Missouri. As part of the Commission's **Report and Order** in MM Docket 92-214¹, channel 244C1 was substituted for channel 244C3 at Columbia, Missouri and the construction permit for KCMQ was modified to specify operation on channel 244C1. Furthermore, channel 221A was allotted to Dixon, Missouri in that proceeding.

Petitions for reconsideration of the **Report and Order** in MM Docket 92-214 were filed by Lake Broadcasting, Inc. (Lake) and Central Missouri Broadcasting, Inc. (CMB). These technical comments were prepared in response to those petitions to demonstrate that channel 264A is available as an additional channel at Dixon or as a substitute channel at Waynesville, Missouri. In addition, it will be demonstrated that the differences in population and area provided by Lake concerning the upgrade of KBMX from Class C2 to Class C1 at Eldon, Missouri are flawed.

As noted in the **Report and Order** at footnote 11, the allotment of channel 221A at Dixon conflicts with

¹ Adopted October 27, 1995, released November 24, 1995, DA 95-2250.

Lake's suggested use of channel 221A as an alternative channel substitution at Waynesville, Missouri for channel 272A in its pending petition for reconsideration in MM Docket No. 89-120. However, it has been determined that channel 264A is apparently available at either Dixon or Waynesville. This would remove the conflict with Lake's petition for reconsideration in MM Docket No. 89-120.²

Figure 1 is a separation study for channel 264A at Dixon, Missouri from a presumed reference site. As can be seen in the tabulation, the minimum distance separations are met with respect to all stations and allotments.

Figure 2 is a separation study for channel 264A from the existing transmitter site of station KJPW-FM which currently operates on channel 272A at Waynesville, Missouri. As shown, the minimum distance separations are met with respect to all stations and allotments.

Figure 3 is a 1:250,000 scale topographic map showing the area to locate channel 264A in compliance with the Commission's minimum separation requirements. The Dixon city limits, channel 264A allotment reference point and Class A city coverage limit are identified. The Dixon city limits are based on information contained in the 1990 US Census for Missouri. The most distant point of the Dixon city limits from the channel 264A allotment

² The allotment of channel 264A to Waynesville would also eliminate any apparent conflict Lake's suggested substitution of channel 221A at Waynesville has with the recent channel 221A allotment at Ava, Missouri which was implemented by the Report and Order in MM Docket No. 91-352.

reference site is approximately 11 kilometers. The predicted 3.16 mV/m principal city contour for a maximum facility Class A station (6 kW, 100 meters) extends approximately 16 kilometers. This satisfies the Commission's allotment requirements.

Figure 3 also depicts the existing KJPW-FM transmitter site. As shown, the KJPW-FM site is located in the fully-spaced area for channel 264A. Furthermore, KJPW-FM currently operates with facilities which are less than the "old" Class A equivalent (3 kW/100 m), whereas operation on channel 264A would be permitted from its existing site with the "new" Class A equivalent (6 kW/100 m). Therefore, operation on channel 264A would comply with the Commission's allotment requirements.

The area and population differences for the KBMX upgrade from Class C2 to C1 at Eldon, Missouri set forth by Lake in its petition for reconsideration are flawed. Specifically, Lake incorrectly states that the upgrade of KBMX from C2 to C1 will result in a 300% difference in area and a 400% difference in population. The error results from understatement of the area and population within KBMX's proposed Class C2 operation which will implement the Class C2 allotment at Eldon.³ Lake indicates that the Class C2 60 dBu contour contains 67,275 persons within 5,027 square kilometers. However, our

³ KBMX's pending application, BPH-930922IE, proposes to operate as a Class C2 station on channel 270 from its current site with a nondirectional effective radiated power of 48 kW and an antenna height above average terrain of 154 meters. These facilities are "equivalent" to the Class C2 maximum (ERP 50 kW/HAAT 150 meters).

calculations indicate that the proposed Class C2 60 dBu contour contains 149,462 persons within 8,553 square kilometers. The error apparently resulted from miscalculation of the distances to the Class C2 60 dBu contour depicted on page 2 of Exhibit A of the Lake petition for reconsideration.⁴ Therefore, the KBMX Class C2 to C1 upgrade will result in an 82% difference in area and an 80% difference in population. It is further noted that the KBMX upgrade from Class A to C2 will result in a 267% difference in area and a 279% difference in population.

The population to be served within the proposed KBMX Class C2 60 dBu contour was determined by a computer program which totals the population within census enumeration districts located within the contour. The 1990 Census was employed. The land area within the 60 dBu contour was determined by numerical integration.

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February 14, 1996

⁴ The area and population figures for the KBMX Class A (2,332 square kilometers, 39,446 persons) and C1 (15,565 square kilometers, 269,040 persons) operations contained in Lake's petition for reconsideration appear to be correct.

FM SEPARATION STUDY

Job Title :Proposed Dixon Ch 264A Allotment Separation Buffer 32 km

FCC DB Date : 02/01/96

Channel 264A (100.7 MHz)

Coordinates : 37-54-36 92-03-35

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
KJMO LIC	Jefferson City MO	BLH910606KE	261C2 100.1	33.0 183.0	38-31-25 92-24-25	336.1	74.60 19.60	55 CLEAR
KUKUFM LIC	Willow Springs MO	BLH890511KA	262C2 100.3	50. 150.0	37-03-49 92-01-39	178.3	93.99 38.99	55 CLEAR
KKCA LIC	Fulton MO	BMLH900718KB	263A 100.5	6.0 91.0	38-51-58 91-57-15	4.9	106.54 34.54	72 CLEAR
KZMM LIC	Troy MO	BLH931123KB	264A 100.7	6.0 100.0	39-03-13 90-59-47	35.7	157.25 42.25	115 CLEAR
KMZU LIC	Carrollton MO	BLH900917KA	264C1 100.7	99. 302.0	39-21-59 93-24-12	324.6	199.57 -0.43	200 CLOSE ¹
KGMO LIC	Cape Girardeau MO	BLH920629KF	264C 100.7	100. 301.0	37-22-16 89-31-52	104.3	231.05 5.05	226 CLOSE
KYLC PADD	Osage Beach MO	RM7139	265A 100.9	.0	38-07-29 92-40-39	294.0	59.26 -12.74	72 SHORT ²
Petition for Recon filed 920616 in D90-66								
KTUIFM LIC	Sullivan MO	BLH810223AG	265A 100.9	3.00 84.0	38-11-42 91-11-12	67.2	82.91 10.91	72 CLOSE
KTXR LIC	Springfield MO	BLH920625KB	267C 101.3	100. 360.0	37-11-40 92-56-04	224.4	110.83 15.83	95 CLOSE

** End of separation study for channel 264A **

¹ Complies with the minimum distance separation requirements of Section 73.207 when rounded to the nearest whole kilometer pursuant to Section 73.208.

² The proposed substitution of channel 265A for 228A at Osage Beach was denied in Docket 90-66.

FM SEPARATION STUDY

Job Title :Proposed KJPW-FM Ch. 264A Allotment Separation Buffer 32 km

FCC DB Date : 02/01/96

Channel 264A (100.7 MHz)

Coordinates : 37-49-09 92-09-06

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
KTKK LIC	Lebanon MO	BLED910429KB	210A 89.9	0.39 46.0	37-40-34 92-40-50	251.3	49.25 39.25	10 CLEAR
KJMO LIC	Jefferson City MO	BLH910606KE	261C2 100.1	33.0 183.0	38-31-25 92-24-25	344.2	81.34 26.34	55 CLEAR
KUKUFM LIC	Willow Springs MO	BLH890511KA	262C2 100.3	50. 150.0	37-03-49 92-01-39	172.5	84.58 29.58	55 CLEAR
KKCA LIC	Fulton MO	BMLH900718KB	263A 100.5	6.0 91.0	38-51-58 91-57-15	8.4	117.50 45.50	72 CLEAR
KZMM LIC	Troy MO	BLH931123KB	264A 100.7	6.0 100.0	39-03-13 90-59-47	35.9	170.16 55.16	115 CLEAR
KMZU LIC	Carrollton MO	BLH900917KA	264C1 100.7	99. 302.0	39-21-59 93-24-12	328.1	203.45 3.45	200 CLOSE
KGMO LIC	Cape Girardeau MO	BLH920629KF	264C 100.7	100. 301.0	37-22-16 89-31-52	101.4	236.72 10.72	226 CLOSE
KYLC PADD	Osage Beach MO	RM7139	265A 100.9	.0	38-07-29 92-40-39	306.6	57.33 -14.67	72 SHORT ¹
Petition for Recon filed 920616 in D90-66								
KTUIFM LIC	Sullivan MO	BLH810223AG	265A 100.9	3.00 84.0	38-11-42 91-11-12	63.4	94.47 22.47	72 CLEAR
KTXR LIC	Springfield MO	BLH920625KB	267C 101.3	100. 360.0	37-11-40 92-56-04	225.1	97.98 2.98	95 CLOSE

** End of separation study for channel 264A **

¹ The proposed substitution of channel 265A for 228A at Osage Beach was denied in Docket 90-66.

Figure 3

